IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 20217 of 2001(F)

PETITIONER:

K.S.CHARLES,
SENIOR ASSISTANT MANAGER (HIGHER GRADE),
KERALA STATE WAREHOUSING CORPORATION,
ERNAKULAM.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)

RESPONDENTS:

1. KERALA STATE WAREHOUSING CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
P.B.NO.1717, ERNAKULAM, COCHIN-16.

2. BOARD OF DIRECTORS,
KERALA STATE WAREHOUSING CORPORATION,
REPRESENTED BY ITS CHAIRMAN, -DO- -DO-

3. EXECUTIVE COMMITTEE, -DO- -DO-

4. MANAGING DIRECTOR,
-DO- -DO-

BY ADV. SRI.MAJNU KOMATH, SC, K.S.W.C.
SRI.N.D.PREMACHANDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.32817/2001 IN OP.NO.20217/2001

Dismissed

23/5/2007

Sd/-
P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE ORDER NO.E/APPOINTMENT/73 DATED 5/7/73 OF THE IST RESPONDENT.

EXT.P2 TRUE COPY OF THE PROCEEDINGS NO.EST/PP/KSC/82-83 DATED 16/02/1983 OF THE IST RESPONDENT.

EXT.P3 TRUE COPY OF THE JUDGMENT IN OP.NO.1791/1990-L DATED 16/3/1999 OF THIS COURT.

EXT.P4 TRUE COPY OF THE ORDER NO.KSWC/EST/PROMOTION/2000-01/11 DATED 29/9/2000 OF THE IST RESPONDENT.

EXT.P4A TRUE EXTRACT COPY OF THE MINUTES OF THE 142ND EXECUTIVE COMMITTEE MEETING HELD ON 13/3/2000.

EXT.P5 TRUE COPY OF THE ORDER NO.EST/PROMOTION/82-83 DATED 13/5/1982 OF THE 4TH RESPONDENT.

EXT.P6 TRUE COPY OF THE ORDER NO.EST/PROMOTION/84-85 DATED 16/11/1984 OF THE 4TH RESPONDENT.

P.R.RAMAN, J.

O.P.NO.20217 OF 2001

Dated this the 23rd day of May, 2007

JUDGMENT

Petitioner, while working as Junior Superintendent in the Kerala State Warehousing Corporation, was served with a memo of charges dated 29/6/1981. Though he submitted an explanation, the Authority was not satisfied with the same and eventually an enquiry was conducted and he was found guilty. He was accordingly imposed a punishment of reversion from the post of Junior Superintendent to the post of Clerical Assistant for a period of three years. An appeal petition filed by the petitioner to the Board of Directors however was dismissed. During the pendency of the appeal the Managing Director of the Warehousing Corporation by a communication dated 30/9/1983 asked the petitioner to remit a sum of Rs.21,395/- being the value of 220 bags of urea, on the ground that the petitioner was responsible for the

financial loss incurred by the Corporation on account of the unauthorised release of urea belonging to the Food Corporation of India. He was later informed that the said amount will be recovered from his salary in instalments. As stated earlier, the appeal was rejected and the same was communicated to him by proceeding dated 19/7/1984. Petitioner then filed O.P.No.7137/84 before this Court. This Court allowed the original petition directing de novo consideration of the appeal by the Board of Directors. Again the Board of Directors considered the appeal afresh and passed an order on 22/1/1990 dismissing the appeal filed by the petitioner. This was again challenged before this Court by filing O.P.No.1791/90. This Court allowed the original petition again directing the Appellate Authority, namely, the Board of Directors, to reconsider the matter and pass fresh orders. In this regard, in paragraph 3 of the judgment produced as Ext.P3 in this case

this Court held as follows:

> "This Court, exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India, cannot re-assess the evidence available on record and arrive at factual findings which may be different from what was found by the Original Authority or the Appellate Authority. But, however, this Court can direct the Appellate Authority to reconsider the matter again in view of the fact that a reading of the impugned order dated 22/1/1990, a copy of the same is marked as Ext.P13, does not show whether certain important aspects in the matter were taken into consideration before disposing of the appeal, namely, (1) no allegations of misappropriation by the petitioner; (2) if the contention is that there was a concerted attempt to sell any urea outside, naturally the petitioner could not have done it by himself; (3) what happened to one lorry load of fertilizer alleged to have been released unauthorisedly; (4) the charge levelled against the petitioner did not contain an allegation that the delinquent official had knowledge and intention of selling 240 bags of urea to appropriate the remaining for

> himself and thus knowingly and intentionally cheated the Warehousing Corporation which is detrimental to the interest of the Corporation; (5) there is no document produced to show that the Warehousing Corporation has sustained a monetary loss merely on account of the alleged negligence or action on the part of the petitioner; and (6) the allegation originally levelled against the petitioner was that there was unauthorised release of the goods by the petitioner and if that be so, it has to be considered whether it would imply that the release of the goods was only in favour of the owner, namely, Food Corporation of India, then the intention of any dishonest misappropriation cannot be accepted."

2. This Court further directed the Board of Directors to reconsider the matter afresh. Curiously enough none of the points stated in paragraph 3 of the aforesaid judgment required to be considered was considered by the Board of Directors while passing fresh order pursuant to Ext.P3 judgment as evidenced by Ext.P4 produced in this case. Still further Ext.P4 is passed by the

Executive Committee whereas on two previous occasions the appeal was dismissed by the Board of Directors. In Ext.P3 judgment this Court directed the Board of Directors to reconsider the matter. Secondly, various points on which the Board of Directors has to give due consideration, were specifically stated in paragraph 3 of the judgment. None of them are seen considered on the face of Ext.P4.

3. The learned Standing Counsel appearing for the Warehousing Corporation submits that the Executive Committee is the Appellate Authority in the case of class 3 employees. It has been rightly refuted by the learned counsel for the petitioner producing a copy of the regulation, which shows that the Board of Directors is the Appellate Authority. No counter affidavit is also filed in this Case.

4. In the above facts and circumstances of the case, I have no hesitation to hold that Ext.P4

is vitiated, as the matter was not reconsidered as directed by this Court in Ext.P3 judgment.

5. In the circumstances, Ext.P4 is quashed. Appropriate consequential orders shall be passed giving all the benefits to the petitioner, which is due to him, within three months from the date of receipt of a copy of this judgment.

Original Petition is allowed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

O.P.NO.20217 OF 2001

JUDGMENT

23rd May, 2007